IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 30TH NOVEMBER 2007 / 9TH AGRAHAYANA 1929

Crl.Rev.Pet.No. 2173 of 2007()

CC.439/2006 of JUDL.MAGISTRATE OF FIRST CLASS COURT, ALATHUR

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REVN. PETITIONER/2nd ACCUSED

SURESHKUMAR,PROPRIETOR,M/S.DINESH AUTO FINANCE,4,CHANDRAPPA MUDHALI STREET, CHENNAI - 79.

BY ADV. SRI.P.CHANDRASEKHAR

RESPONDENTS:

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1. JAYARAJAN,S/O.KOMPI,39 YEARS, EDASSERY PARAMBU,THIRUVIZHIYAD, AMSOM,AYILOOR,CHITTOOR TALUK,PALAKKAD.

2. STATE OF KERALA REPRESENTD BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI. C.M. NAZAR, PUBLIC PROSECUTOR
SRI.SAJEEV KUMAR K.GOPAL
SRI.BINOY VASUDEVAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 30/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL.M.A. NO. 6105/2007 IN CRL.R.P. NO. 2173/2007

DISMISSED

30.11.2007 SD/- V. RAMKUMAR, JUDGE.

/True Copy/

P.A to Judge.

V. RAMKUMAR , J

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CRL.R.P. NO. 2173 OF 2007

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Dated this the 30th day of November, 2007.

ORDER

In this revision filed under Section 397 r/w Section 401 Cr.P.C, the revision petitioner, who is the financier in respect of a tractor and trailer, challenges the cognizance taken by the Judicial First Class Magistrate, Alathur in a protest complaint filed by the 1st respondent herein, Jayarajan and the consequential proceedings initiated as C.C. No. 439/2006.

2. Shri. P. Chandrasekhar, the learned counsel appearing for the revision petitioner made the following submissions in support of the revision.

The 1st respondent had earlier filed a private complaint before the very same court which had forwarded the same to the police under Section 156(3) Cr.P.C and the police after due investigation had filed a refer report before the court to the effect that the allegation in the complaint was not correct. The learned Magistrate had accepted the refer report and had refused to take cognizance of the offence alleged in the earlier private complaint. It was thereafter that the 1st respondent filed the present protest complaint before the Magistrate. The Magistrate was acting mechanically by taking cognizance of the

offences without adverting to the material produced along with the refer report filed by the police. Even in Annexure A5 which is the copy of the subsequent private complaint filed by the 1st respondent, the allegations therein are to the effect that the tractor as well as the trailer in question were entrusted by the complainant with the 1st accused, his relative, for payment of tax and the 1st accused had fraudulently created forged documents so as to effect a transfer of the vehicle in his name and thereafter with the connivance of the revision petitioner/2nd accused, the 1st accused was effecting an endorsement of the hire purchase in the R.C. Book and the accused have thereby committed offences punishable under Sections 420, 403, 406, 409, 465, 467, 471 and 199 r/w Section 34 IPC. Both in the earlier complaint as well as in the present complaint, the 1st respondent has no case that the 2nd accused, the financier had anything to do with the transfer of the vehicle in the name of the 1st accused and the only role attributed to the 2nd accused, the financier is in effecting the HP endorsement. The case of the 1st respondent was that the transfer was effected in collusion with the employees of the Motor Vehicles Department and there is no averment that the 2nd accused had any role to play in the transfer of the registration certificate. If so, the 2nd

accused was validly joining the Form 34, joint application for making HP endorsement in respect of a vehicle which stood transferred in the name of the 1st accused for which exercise the 2nd accused had no role to play. Hence, the Magistrate was acting illegally in taking cognizance of the offence as against this revision petitioner/2nd accused.

3. I am afraid that I cannot agree with the above submissions. It is true that there is an allegation that the 1st accused, with whom the vehicle was entrusted, had fraudulently and dishonestly effected the transfer of the vehicle in his name. But, then the 2nd accused, financier had admittedly joined in the application for effecting HP endorsement. Whether he was a privy to the transfer of the vehicle is a matter which will have to be considered after trail. There is an averment in the complaint which reads as follows:

In the face of the above averment in the complaint, the Magistrate cannot be faulted in taking cognizance of the offences.

4. It is true that the Magistrate has taken cognizance of the offences as against A1 and A2 in a protest complaint filed after the Magistrate had accepted the refer report filed by the police and had dropped the proceedings. But, it is well settled that the acceptance of the refer report and dropping of the proceedings will not preclude the subsequent filing of a protest complaint on the same set of facts. [(vide **Kishore Kumar Gyanchandani v. G.D. Mehrotra** (AIR 2002 SC 483) & **Arun Kumar v. Union of India** (2003 (1) SCC 734)] The decision cited by the learned counsel reported in **Arun Kumar v.**

Union of India (2003 (1) SCC 734) does not stand in the way of taking cognizance on a protest complaint after the refer report has been accepted by the court. Of course, where a private complaint has been dismissed on the merits, another private complaint on the same set of facts will not ordinarily be entertained unless there are special reasons to do so. That is not the position here. I do not therefore find any good ground to interfere with the cognizance taken by the Magistrate. The revision petitioner will have to go for trial.

5. The learned counsel for the revision petitioner submitted that the revision petitioner is residing far away in Madras and he will be put to untold hardship if he were to attend the court on all the dates of posting of the case. Well, that is a matter for the Magistrate to consider, if an application under Section 317 Cr.P.C is filed. Even if no question of identity is involved, the revision petitioner may have to appear before court on the conclusion of trial. The revision fails and the same is accordingly dismissed.

V. RAMKUMAR, JUDGE.

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